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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI**

LELAH ORTNER,

Case No. 3:19-cv-00017-HTW-LRA

Plaintiff,

— vs —

CAPITAL ONE BANK (USA), N.A.,

Defendant.

PLAINTIFF’S FIRST AMENDED COMPLAINT

NOW COMES Plaintiff, LELAH ORTNER (“Plaintiff”), through her attorneys, and hereby alleges the following against Defendant, CAPITAL ONE BANK (USA), N.A. (“Defendant”):

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter “TCPA”), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Defendant conducts business in the state of Mississippi, and therefore, personal jurisdiction is established.
3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.
4. Venue is proper in the United States District Court for the Northern District of Mississippi pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a

1 substantial part of the events or omissions giving rise to the herein claims occurred, or a
2 substantial part of property that is the subject of the action is situated within this District.

3 **PARTIES**

- 4 5. Plaintiff is a natural person residing in the Tishomingo County, in the city of Iuka,
5 Mississippi.
- 6 6. Defendant is a Virginia corporation doing business in the State of Mississippi with its
7 principal place of business located in McLean, Virginia.
- 8 7. At all times relevant to this Complaint, Defendant has acted through its agents, employees,
9 officers, members, directors, heir, successors, assigns, principals, trustees, sureties,
10 subrogees, representatives and insurers.

11 **FACTUAL ALLEGATIONS**

- 12 8. Defendant is a “person” as defined by 47 U.S.C. § 153 (39).
- 13 9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged
14 debts owed by Plaintiff.
- 15 10. Defendant placed collection calls to Plaintiff’s cellular telephone at phone number (662)
16 660-32XX.
- 17 11. Defendant placed collection calls to Plaintiff from phone numbers including, but not
18 limited to, (800) 955-6600 and (866) 953-7906.
- 19 12. Per its prior business practices, Defendant’s calls were placed with an automated telephone
20 dialing system (“auto-dialer”).
- 21 13. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)
22 (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly
23 owed by Plaintiff, LELAH ORTNER.
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1 14. Defendant's calls constituted calls that were not for emergency purposes as defined by 47
2 U.S.C. § 227(b)(1)(A).

3 15. Defendant's calls were placed to a telephone number assigned to a cellular telephone
4 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
5 227(b)(1).

6 16. Defendant never received Plaintiff's "prior express consent" to receive calls using an
7 automatic telephone dialing system or an artificial or prerecorded voice on her cellular
8 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

9 17. On or about March 8, 2018, at or about 2:27 p.m. Pacific Standard Time, the Plaintiff
10 spoke with Defendant's female representative at phone number (866) 953-7906 and
11 requested that Defendant cease calling Plaintiff's cellular phone.

12 18. During the conversation, Plaintiff gave Defendant both her name, social security number,
13 date of birth, and zip code to assist Defendant in accessing her account before asking
14 Defendant to stop calling her cell phone.

15 19. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular telephone
16 and/or to receive Defendant's calls using an automatic telephone dialing system in her
17 conversation with Defendant's representative on March 8, 2018.

18 20. Despite Plaintiff's request to cease, Defendant continued to place collection calls to
19 Plaintiff through August 9, 2018.

20 21. Despite Plaintiff's request that Defendant cease placing automated collection calls,
21 Defendant placed at least One Hundred Eighty-Nine (189) automated calls to Plaintiff's
22 cell phone.
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25 **FIRST CAUSE OF ACTION**
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227

22. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-21.

23. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

24. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

25. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 et. seq.

26. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-21.

27. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

28. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

1 WHEREFORE, Plaintiff, LELAH ORTNER, respectfully requests judgment be entered
2 against Defendant, CAPITAL ONE BANK (USA), N.A., for the following:

3 **FIRST CAUSE OF ACTION**

4 30. For statutory damages of \$500.00 multiplied by the number of negligent violations of the
5 TCPA alleged herein (189); \$94,500.00;

6 31. Actual damages and compensatory damages according to proof at time of trial;

7 **SECOND CAUSE OF ACTION**

8 32. For statutory damages of \$1,500.00 multiplied by the number of knowing and/or willful
9 violations of TCPA alleged herein (189); \$283,500.00;

10 33. Actual damages and compensatory damages according to proof at time of trial;

11 **ON ALL CAUSES OF ACTION**

12 34. Costs and reasonable attorneys' fees;

13 35. Any other relief that this Honorable Court deems appropriate.

14 **JURY TRIAL DEMAND**

15 Plaintiff demands a jury trial on all issues so triable.

16
17 RESPECTFULLY SUBMITTED,

18
19 DATED: January 30, 2019

20
21 By: /s/ Wesley H. Blacksher
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